

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-5988

PETITION OF DAVID W. JACKSON

(Hearing held June 9, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, July 9, 2004)

CORRECTED OPINION: CLERICAL CORRECTION PAGE 2

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.326. The petitioner proposes to construct three accessory structures in the front yard. The three accessory structures are: a pool, a ten-foot fence and an eight-foot wall. Section 59-C-1.326 requires that accessory structures are to be located in the rear yard only.

Kinley R. Dumas, Esquire, and James Crawford, AICP, represented the petitioner at the public hearing.

The subject property is Lot 28, Block D, Potomac Ranch Subdivision, located at 10624 Alloway Drive, Potomac, Maryland, 20854, in the RE-2 Zone (Tax Account No. 1003181591).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 20 x 40 foot pool, 10-foot chain-link fence and an 8-foot wall.
2. Mr. Crawford testified that the property is surrounded on three sides by public roadways. Alloway Drive adjoins the property at its north and east boundaries, and Falls Road adjoins the property at its western boundary. Mr. Crawford testified that the residence faces the eastern section of the property and that the western, rear yard of the property backs up to Falls Road. See, Exhibit No. 10 [Alloway Drive map].
3. Mr. Crawford testified that that all ingress and egress to the petitioner's lot is via Alloway Drive, which is a privately maintained road. The petitioner shares the privately maintained road with three other properties, Lots 27, 29 and 30. Mr. Crawford testified that when the subdivision was approved by M-NCPPC,

Alloway Drive was designated as a private road and that only a public road can be used in the calculations for a front yard setback. Mr. Crawford testified that when the plat was recorded, access to Falls Road for the property was denied.

4. Mr. Crawford testified that the Department of Permitting Services (DPS) designated Falls Road and Alloway Drive as front yards for the property and that the proposed structures will be located in an area that functions as the property's rear yard. See, Exhibit Nos. 4 [site plan] and 9(b) [approved preliminary plan].
5. The petitioner testified that most homes in the neighborhood have pools and tennis courts and that area that borders Falls Road is heavily wooded, as is the northern section of the property that borders Alloway Drive.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's lot is bordered on three sides by public roads, Falls Road to the west and Alloway Drive to the north and east. DPS designated the property as having two front yards, on Falls Road at the western boundary and on Alloway Drive at the eastern boundary. **The property is only accessible via a privately maintained road.** The Board finds that these conditions are peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owner were the variances to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a pool, a 10-foot fence and an 8-foot wall are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed structures will be screened by the existing woods and vegetation and that the proposed structures will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of to permit a pool, a 10-foot fence and an 8-foot wall to be located in the front yard are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, and the representation of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4, 5, 6 and 7.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Louise L. Mayer was necessarily absent and did not participate in the Resolution. On a motion by Angelo M. Caputo, seconded by Donald H. Spence, Jr., Chairman, with Donna L. Barron and Allison Ishihara Fultz, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 9th day of July, 2004.

Katherine Freeman

Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.